

111TH CONGRESS  
1ST SESSION

# S. 1938

To establish a program to reduce injuries and deaths caused by cellphone use and texting while driving.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 27, 2009

Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. LAUTENBERG, Mr. SCHUMER, Mr. THUNE, Ms. KLOBUCHAR, and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

OCTOBER 29, 2009

Committee discharged; referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To establish a program to reduce injuries and deaths caused by cellphone use and texting while driving.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Distracted Driving Prevention Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Distracted driving incentive grants.
- Sec. 3. Distracted driving national education program.
- Sec. 4. Research and data collection.
- Sec. 5. Research program.
- Sec. 6. FCC report on distracted driving technology.
- Sec. 7. Provision of information to States.
- Sec. 8. Commercial motor vehicles and school buses.
- Sec. 9. Funding.

1 **SEC. 2. DISTRACTED DRIVING INCENTIVE GRANTS.**

2 (a) IN GENERAL.—Chapter 4 of title 23, United  
 3 States Code, is amended by adding at the end the fol-  
 4 lowing:

5 **“§413. Distracted driving incentive grants**

6 “(a) IN GENERAL.—The Secretary shall make a  
 7 grant under this section to any State that enacts and im-  
 8 plements a statute that meets the requirements of sub-  
 9 sections (b) and (c) of this section.

10 “(b) PROHIBITION ON TEXTING WHILE DRIVING.—  
 11 A State statute meets the requirements of this subsection  
 12 if the statute—

13 “(1) prohibits the use of a personal wireless  
 14 communications device by a driver for texting while  
 15 driving;

16 “(2) makes violation of the statute a primary  
 17 offense;

18 “(3) establishes—

19 “(A) a minimum fine for a first violation  
 20 of the statute; and

1                   “(B) increased fines for repeat violations;  
2                   and

3                   “(4) provides increased civil and criminal pen-  
4                   alties than would otherwise apply if a vehicle acci-  
5                   dent is caused by a driver who is using such a device  
6                   in violation of the statute.

7                   “(c) PROHIBITION ON HANDHELD CELLPHONE USE  
8 WHILE DRIVING.—A State statute meets the require-  
9 ments of this subsection if the statute—

10                  “(1) prohibits a driver from holding a personal  
11                  wireless communications device to conduct a tele-  
12                  phone call while driving;

13                  “(2) allows the use of hands-free devices that  
14                  enable a driver, other than a driver who has not at-  
15                  tained the age of 18, to initiate, conduct, or receive  
16                  a telephone call without holding the device;

17                  “(3) makes violation of the statute a primary  
18                  offense;

19                  “(4) requires distracted driving issues to be  
20                  tested as part of the State driver’s license examina-  
21                  tion;

22                  “(5) establishes—

23                         “(A) a minimum fine for a first violation  
24                         of the statute; and

1                   “(B) increased fines for repeat violations;  
2                   and

3                   “(6) provides increased civil and criminal pen-  
4                   alties than would otherwise apply if a vehicle acci-  
5                   dent is caused by a driver who is using such a device  
6                   in violation of the statute.

7                   “(d) PERMITTED EXCEPTIONS.—A statute that  
8                   meets the requirements of subsections (b) and (c) may  
9                   provide exceptions for—

10                  “(1) use of a personal wireless communications  
11                  device by a driver to contact emergency services;

12                  “(2) manipulation of such a device by a driver  
13                  to activate, deactivate, or initialize the hands-free  
14                  functionality of the device;

15                  “(3) use of a personal wireless communications  
16                  device by emergency services personnel while oper-  
17                  ating an emergency services vehicle and engaged in  
18                  the performance of their duties as emergency serv-  
19                  ices personnel; and

20                  “(4) use of a device by an individual employed  
21                  as a commercial motor vehicle driver, or a school bus  
22                  driver, within the scope of such individual’s employ-  
23                  ment if such use is permitted under the regulations  
24                  promulgated pursuant to section 31152 of title 49.

1       “(e) GRANT YEAR.—The Secretary shall make a  
2 grant under this section to a State in any year in which  
3 the State—

4               “(1) enacts a law that meets the requirements  
5 of subsections (b) and (c) before July 1; or

6               “(2) maintains a statute, that meets the re-  
7 quirements of subsections (b) and (c), enacted in a  
8 previous year that is in effect through June 30th of  
9 the grant year.

10       “(f) DISBURSEMENT AND APPORTIONMENT.—Grants  
11 to qualifying States shall be disbursed after July 1 each  
12 year according to the apportionment criteria of section  
13 402(c).

14       “(g) USE OF GRANT FUNDS.—A State that receives  
15 a grant under this section—

16               “(1) shall use at least 50 percent of the  
17 grant—

18                       “(A) to educate and advertise to the public  
19 information about the dangers of texting or  
20 using a cellphone while driving;

21                       “(B) for traffic signs that notify drivers  
22 about the distracted driving law of the State;

23                       “(C) for law enforcement of the distracted  
24 driving law; or

25                       “(D) for a combination of such uses; and

1           “(2) may use up to 50 percent of the grant for  
 2           other projects that improve traffic safety and that  
 3           are consistent with the criteria in section 402(a).

4           “(h) DEFINITIONS.—In this section:

5           “(1) DRIVING.—The term ‘driving’ means oper-  
 6           ating a motor vehicle on a public road, including op-  
 7           eration while temporarily stationary because of traf-  
 8           fic, a traffic light or stop sign, or otherwise. It does  
 9           not include operating a motor vehicle when the vehi-  
 10          cle has pulled over to the side of, or off, an active  
 11          roadway and has stopped in a location where it can  
 12          safely remain stationary.

13          “(2) HANDS-FREE DEVICE.—The term ‘hands-  
 14          free device’ means a device that allows a driver to  
 15          use a personal wireless communications device to ini-  
 16          tiate, conduct, or receive a telephone call without  
 17          holding the personal wireless communications device.

18          “(3) PERSONAL WIRELESS COMMUNICATIONS  
 19          DEVICE.—The term ‘personal wireless communica-  
 20          tions device’ means a device through which personal  
 21          wireless services (as defined in section  
 22          332(c)(7)(C)(i) of the Communications Act of 1934  
 23          (47 U.S.C. 332(c)(7)(C)(i))) are transmitted. It does  
 24          not include a global navigation satellite system re-

1 ceiver used for positioning, emergency notification,  
2 or navigation purposes.

3 “(4) PRIMARY OFFENSE.—The term ‘primary  
4 offense’ means an offense for which a law enforce-  
5 ment officer may stop a vehicle solely for the pur-  
6 pose of issuing a citation in the absence of evidence  
7 of another offense.

8 “(5) PUBLIC ROAD.—The term ‘public road’  
9 has the meaning given that term in section 402(c).

10 “(6) TEXTING.—The term ‘texting’ means  
11 reading from or manually entering data into a per-  
12 sonal wireless communications device, including  
13 doing so for the purpose of SMS texting, e-mailing,  
14 instant messaging, or engaging in any other form of  
15 electronic data retrieval or electronic data commu-  
16 nication.”.

17 (b) CONFORMING AMENDMENT.—The table of con-  
18 tents for chapter 4 of title 23, United States Code, is  
19 amended by adding at the end the following:

“413. Distracted driving incentive grants.”.

20 **SEC. 3. DISTRACTED DRIVING NATIONAL EDUCATION PRO-**  
21 **GRAM.**

22 (a) IN GENERAL.—The Administrator of the Na-  
23 tional Highway Traffic Safety Administration shall estab-  
24 lish and administer a program under which at least 2  
25 high-visibility education and advertising campaigns related

1 to distracted driving will be carried out for the purpose  
2 specified in subsection (b) for fiscal years 2010 and 2011.

3 (b) PURPOSE.—The purpose of an education and ad-  
4 vertising campaign under this section shall be to educate  
5 the public about the risks associated with distracted driv-  
6 ing, including those associated with—

7 (1) texting (as defined in section 413(h)(6) of  
8 title 23, United States Code) while driving; and

9 (2) the use of personal wireless communications  
10 devices (as defined in section 413(h)(3) of that title)  
11 while driving.

12 (c) ADVERTISING.—The Administrator may use, or  
13 authorize the use of, funds available to carry out this sec-  
14 tion to pay for the development, production, publication,  
15 and broadcast of electronic and print media advertising  
16 in carrying out traffic safety education and advertising  
17 campaigns under this section. The Administrator—

18 (1) shall give consideration to advertising di-  
19 rected at non-English speaking populations, includ-  
20 ing those who listen, read, or watch nontraditional  
21 media; and

22 (2) may use a portion of the funds available for  
23 this program to target local jurisdictions that have  
24 enacted laws prohibiting texting or the use of per-  
25 sonal wireless communications devices while driving.



1 (d) COORDINATION WITH STATES.—The Adminis-  
 2 trator may coordinate with the States to carry out the  
 3 education and advertising campaigns under this section to  
 4 coincide with high-visibility enforcement of State laws pro-  
 5 hibiting texting while driving or the use of personal wire-  
 6 less communications devices while driving.

7 (e) ANNUAL EVALUATION.—The Administrator shall  
 8 conduct an annual evaluation of the effectiveness of the  
 9 education and advertising campaigns under this section,  
 10 and report the results to the Senate Committee on Com-  
 11 merce, Science, and Transportation, and the House of  
 12 Representatives Committee on Energy and Commerce.

13 **SEC. 4. RESEARCH AND DATA COLLECTION.**

14 (a) IN GENERAL.—Section 408(e)(2) of title 23,  
 15 United States Code, is amended to read as follows:

16 “(2) DATA ON USE OF ELECTRONIC DEVICES.—  
 17 “(A) The model data elements required  
 18 under paragraph (1) shall include data ele-  
 19 ments, as determined appropriate by the Sec-  
 20 retary, in consultation with the States and ap-  
 21 propriate elements of the law enforcement com-  
 22 munity, on the impact on traffic safety of the  
 23 use of electronic devices while driving.

1           “(B) In order to meet the requirements of  
2           subparagraph (A), State and local governments  
3           shall—

4                   “(i) require that official vehicle acci-  
5                   dent investigation reports include a des-  
6                   ignated space to record whether or not the  
7                   use of a personal wireless communications  
8                   device (as defined in section 413(h)(3))  
9                   was in use at the time of the accident by  
10                  any driver involved in the accident;

11                   “(ii) require that all law enforcement  
12                   officers, as part of a vehicle accident inves-  
13                   tigation, inquire about and record the in-  
14                   formation required by clause (i); and

15                   “(iii) incorporate the information col-  
16                   lected under clause (i) into its traffic safe-  
17                   ty information system.”.

18           (b) EFFECTIVE DATE.—The amendment made by  
19           subsection (a) shall apply with respect to grants under sec-  
20           tion 408 of title 23, United States Code, for fiscal years  
21           beginning after fiscal year 2010.

22   **SEC. 5. RESEARCH PROGRAM.**

23           (a) IN GENERAL.—The Secretary of Transportation  
24           shall establish a research program to study distracted  
25           driving by passenger and commercial vehicle drivers.

1 (b) SCOPE.—The program shall include studies of—

2 (1) driver behavior;

3 (2) vehicle technology; and

4 (3) portable electronic devices that are com-  
5 monly brought into passenger or commercial vehi-  
6 cles.

7 (c) RESEARCH AGREEMENTS.—

8 (1) IN GENERAL.—In carrying out this section  
9 the Secretary may grant research contracts to non-  
10 governmental entities to study distracted driving.

11 (2) LIMITATIONS.—The Secretary may not  
12 grant a research contract under this section to any  
13 person that produces or sells—

14 (A) electronic equipment that is used in ve-  
15 hicles;

16 (B) portable electronic equipment com-  
17 monly brought into passenger or commercial ve-  
18 hicles; or

19 (C) passenger or commercial vehicles.

20 **SEC. 6. FCC REPORT ON DISTRACTED DRIVING TECH-**  
21 **NOLOGY.**

22 Within 180 days after the date of enactment of this  
23 Act, the Federal Communications Commission shall sub-  
24 mit a report to the Senate Committee on Commerce,  
25 Science, and Transportation and the House of Represent-

1 atives Committee on Energy and Commerce that identi-  
2 fies—

3 (1) data the Commission can collect and ana-  
4 lyze that will assist in understanding and reducing  
5 the problem of distracted driving involving the use of  
6 personal communications devices;

7 (2) existing and developing wireless communica-  
8 tions technology that may be used to reduce prob-  
9 lems associated with distracted driving; and

10 (3) existing authority that the Commission may  
11 use to assist in reducing those problems.

12 **SEC. 7. PROVISION OF INFORMATION TO STATES.**

13 Section 30105 of title 49, United States Code, shall  
14 not apply to providing government-sponsored research and  
15 highway safety data, or providing technical assistance, re-  
16 lating to legislative proposals addressing the dangers or  
17 potential dangers of—

18 (1) texting while driving a passenger vehicle,  
19 school bus, or commercial vehicle; or

20 (2) the use of personal wireless communications  
21 devices (as defined in section 413(h)(3) of title 23,  
22 United States Code) while driving a passenger vehi-  
23 cle, school bus, or commercial vehicle.

1 **SEC. 8. COMMERCIAL MOTOR VEHICLES AND SCHOOL**  
 2 **BUSES.**

3 (a) IN GENERAL.—Subchapter III of chapter 311 of  
 4 title 49, United States Code, is amended by adding at the  
 5 end the following:

6 **“§31152. Regulation of the use of distracting devices**  
 7 **in commercial motor vehicles and school**  
 8 **buses**

9 “(a) IN GENERAL.—No later than 1 year after the  
 10 enactment of the Distracted Driving Prevention Act of  
 11 2009, the Secretary of Transportation shall prescribe reg-  
 12 ulations on the use of electronic or wireless devices, includ-  
 13 ing cell phones and other distracting devices, by an indi-  
 14 vidual employed as the operator of—

15 “(1) a commercial motor vehicle while that indi-  
 16 vidual is engaged in the performance of such individ-  
 17 ual’s duties as the operator of the commercial motor  
 18 vehicle; or

19 “(2) a school bus (as defined in section  
 20 30125(a)(1)) that is a commercial motor vehicle (as  
 21 defined in section 31301(4)(A)) while that individual  
 22 is engaged in the performance of such individual’s  
 23 duties as the operator of the school bus.

24 “(b) BASIS FOR REGULATIONS.—The Secretary shall  
 25 base the regulations required by subsection (a) on accident

1 data analysis, the results of ongoing research, and other  
2 information, as appropriate.

3 “(c) PROHIBITED USE.—The Secretary shall prohibit  
4 the use of such devices in circumstances in which the Sec-  
5 retary determines that their use interferes with the driv-  
6 er’s safe operation of a school bus or commercial motor  
7 vehicle.

8 “(d) PERMITTED USE.—Under the regulations, the  
9 Secretary may permit the use of a device, the use of which  
10 is prohibited under subsection (c), if the Secretary deter-  
11 mines that such use is necessary for the safety of the driv-  
12 er or the public in emergency circumstances.”.

13 (b) CONFORMING AMENDMENT.—The table of con-  
14 tents for chapter 311 of title 49, United States Code, is  
15 amended by inserting after the item relating to section  
16 31151 the following:

“31152. Regulation of the use of distracting devices in commercial motor vehi-  
cles and school buses.”.

17 **SEC. 9. FUNDING.**

18 Section 2001(a) of Public Law 109–59 is amended—

19 (1) by striking “and” in paragraph (4);

20 (2) by striking “2009.” in paragraph (4) and  
21 inserting “2009, \$94,500,000 for fiscal year 2010,  
22 and \$94,500,000 for fiscal year 2011. If any amount  
23 of the funds authorized by this paragraph has not  
24 been allocated to States meeting the criteria of sec-

1       tion 406 of title 23, United States Code, by July 1  
2       of a fiscal year beginning after fiscal year 2009, the  
3       unallocated amount shall be allocated to States  
4       meeting the criteria of section 413 of that title.”;  
5       and

6               (3) by redesignating paragraph (11) as para-  
7       graph (12) and inserting after paragraph (10) the  
8       following:

9               “(11) DISTRACTED DRIVING PROGRAM.—For  
10       carrying out section 3 of the Distracted Driving Pre-  
11       vention Act of 2009, \$30,000,000 for each of fiscal  
12       years 2010 and 2011.”.

○